1881

GOPEE NATH ACHARJE v. ACHCHA BIBEE.

was to vest in the plaintiff the property in this money and take it out of the disposal of the Small Cause Court Judge. After that order had been carried out, the judgment-debtor, Gaida Bibee, ceased to have any interest in the money which could be attached by the defendant in execution of his decree. Whether an order made by the Court under the proviso of s. 272 was intended by the Legislature to be a final order, is a matter which we do not think it necessary to decide in the present case. It is sufficient for us to say that, under the particular circumstances of this case, the Small Cause Court Judge had no jurisdiction to proceed under the section at the time when he so proceeded. The decision of the lower Appellate Court will be confirmed.

Appeal dismissed.

Before Mr. Justice Prinsep and Mr. Justice Field.

1881
July 7.

SREENATH GOOHO AND OTHERS (DECREE-HOLDERS) *v.* YUSOOF KHAN (JUDGMENT-DEBTOR).*

Execution-Proceedings—Limitation—Civil Procedure Code (Act X of 1877), ss. 230, 235, 236, and 237.

In execution of a decree passed more than twelve years before the date of the Civil Procedure Code (Act X of 1877), certain judgment-creditors applied for the attachment and sale of certain specified property belonging to their judgment-debtor, previous to the date on which the three years allowed for such execution, under s. 230, would have expired. Subsequently, after the three years had elapsed, they filed a fresh application, praying that certain other property of their judgment-debtor might be attached and sold in lieu of that specified in their former application, and that the latter might be released.

Held, that execution of the decree was barred by limitation.

Per PRINSEP, J.—Under s. 230 of the Civil Procedure Code, it was intended by the Legislature that a decree-holder, seeking to execute a decree passed more than twelve years before, should have one opportunity to execute that decree, and that if he fails to satisfy it on that application, any further application becomes barred.

* Appeal from Order, No. 197 of 1881, against the order of R. F Rampini, Esq., Judge of Dacca, dated the 9th April 1881, affirming the order of Baboo K. D. Chatterjee, Munsif of that district, dated the 22nd December 1880.

1881

SREENATH GOOHO v. YUSOOF KHAN.

THE facts out of which this appeal arose were as follows:—The appellants, in execution of a decree, dated the 8th February 1865, filed a petition on the 20th September 1880, asking for the attachment and sale of certain immoveable properties therein specified, belonging to the respondent, their judgment-debtor. On the 12th November 1880, they filed a fresh application, in which they asked that certain properties other than those specified in their former application might be attached and sold, and that the properties attached under their first application might be released. Thereupon the judgment-debtor objected that this decree, which the applicants sought to execute, was barred on the 1st October 1880, under s. 230 of the Civil Procedure Code, seeing that the application of the 20th September had been abandoned, and a wholly new application made on the 12th November. The execution-creditors, however, contended, that the application of the 12th November was merely one in the execution-proceedings, and by way of amendment to that of the 20th September; and inasmuch as that application was within the period prescribed for limitation to take effect, they were entitled to the relief they sought. The Munsif held, that this contention could not be supported, and that the application of the 20th September, though not formally struck off the file, was virtually so, and had been abandoned by the judgment-creditors, and consequently that the application of the 12th November could not be looked on as supplemental thereto, but that it was an entirely fresh attempt to execute the decree, and consequently that limitation applied, and the remedy was barred. The application was accordingly refused with costs, and this decision was upheld on appeal before the District Judge.

The judgment-creditors accordingly now specially appealed to the High Court.

Baboo *Bussunt Coomar Bose* for the appellants.

No one appeared for the respondent.

The judgments of the Court (PRINSEP and FIELD, JJ.) were as follows:—

PRINSEP, J.—It is admitted that the decree under execution

1881

SREENATH GOOHO v. YUSOOF KHAN.

in this case was passed more than twelve years ago. On the 20th September 1880, the decree-holders made an application under s. 235 of the Code of Civil Procedure of 1877 to execute the decree, and simultaneously, by a separate petition, they filed a schedule of the properties which they wished to proceed against, in order to realize the amount of their decree. On the 12th November 1880, they put in a fresh application, asking, as the District Judge says, "not that certain errors in the last preceding application for execution be corrected, but that the whole of the properties attached conformably thereto be released, and certain other property specified in the form be attached in their stead." If this application of the 12th November 1880 be regarded as a fresh application to execute, it is barred under s. 230 of the Code. If, however, the application of the 20th September be regarded as the application under which the decree-holders are now proceeding, they cannot enforce their decree as against this particular property. The appellants' pleader, however, contends that having, on the 20th September 1880, applied for execution of decree, they were at liberty to extend that application so as to include properties not mentioned in it, but any other property of the judgment-debtor which they should think fit to specify; in other words, the application having been made with a mind to proceed against certain properties, they should be at liberty to extend it for an unlimited period against other properties. It appears to us, that the object of s. 230 was to exclude applications of this nature, and that it was intended that the decree-holder, seeking to execute a decree passed more than twelve years before, should have one opportunity to execute that decree, and that if he should fail to satisfy it on that application, any further application becomes barred. The order of the lower Appellate Court will, therefore, be confirmed, and such confirmation notified in the usual manner.

FIELD, J.—I am of the same opinion. Section 236 of the Code enacts: "Whenever an application is made for the attachment of any moveable property belonging to the judgment-debtor, but not in his possession, the decree-holder shall annex to the application an inventory of the property to be attached."

1881

SREENATH GOOHO v. YUSOOF KHAN.

Section 237 provides, that "whenever an application is made for the attachment of any immoveable property belonging to the judgment-debtor, it shall contain at the foot a description of the property sufficient to identify it, &c." Now, it is quite clear that the application for attachment spoken of in these two sections is the application mentioned in s. 235, and that the above provisions are to be read with cl. (*j*) of s. 235. From this it appears to have been the intention of the Legislature that an inventory, or sufficient description, of the property sought to be attached, whether moveable or immoveable, should be attached to the application for execution mentioned in s. 235. In the case before us, if the application of the 19th November 1880 be treated as a substantive application under s. 235, it is, in the first place, defective in form; and in the second place, it is barred by limitation, having been made after the *twelve* years mentioned in s. 230. But then it is contended that this application may be accepted by way of an application amending and supplementary to the original application of the 20th September 1880. I think that, from what I have just said, it is clear that an inventory of the property, when moveable, must be delivered into Court along with the application for execution under s. 235; and if this supplementary list of property were allowed to be put in after the expiration of the twelve years, the essential portion of the law would be practically defeated.

Appeal dismissed.